

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

VS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/776,321 04/15/97 WUBBEN

M 29865

000116 IM22/0207
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EXAMINER

SHERRER, C

ART UNIT PAPER NUMBER

1761

DATE MAILED:

02/07/00

26

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/776,321

Applicant(s)

Wubben et al

Examiner

Curtis E. Sherrer

Group Art Unit

1761



Responsive to communication(s) filed on Nov 24, 1999

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 18, 20-29, 31, 36, 37, 39, 40, and 43-51 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 18, 20-29, 31, 36, 37, 39, 40, and 43-51 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

Specification

1. The amendment filed 04/15/97 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the Abstract contains phrasing not found in the specification. Specifically, it could not be found where there is basis for “partially saponify (de-esterify) the pectins” or “the foam stabilizers need have no negative effect on the taste of the beer.” It is noted that the Declaration did not state that the inventors had reviewed this preliminary amendment and therefore it is not considered to be part of the originally submitted specification.

Applicant is required to cancel the new matter in the reply to this Office action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 36, 37, 39, 40, and 43-51 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to

reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants have amended their claims by inserting the following phrase for which no specificational basis was given or found: The limitations of Claim 50 and 51. While Applicants referred to page 17 of the instant specification, no basis was found therein.

4. Further, no basis was found fore the phrase “measurably increased foam head stability,” as found in claim 36. See rejection below.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 36, 37, 39, 40, 43-49 and 51 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 36 is considered to indefinite because the scope of the phrase “measurably increased foam head stability” is unknown. While it is a fact that one in the art can measure an increase in foam head stability (as described in the specification), the scope of how much of an increase is not known.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

9. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Papazian (The New Complete Joy of Home Brewing, page 64) as evidenced by The Practical Brewer (pages 138-39) for the reasons set forth in the last Office Action.

10. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Lutzen et al (Homebrew Favorites, pp. 80 and 81) as evidenced by The Practical Brewer (pages 138-39) for the reasons set forth in the last Office Action.

11. Claims 36, 37, 39, 40, and 43-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Bukovskii et al. (S.U. Pat. No. 685689) for the reasons set forth in the last Office Action.

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 18, 20-29, 31, 50 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al. for the reasons set forth in the last Office Action

14. Claims 18, 20-29, 31, 50 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al in view of The Practical Brewer and in further view of Food Colloids (pp. 418-35) for the reasons set forth in the last Office Action.

15. Claims 18, 20-29, 31, 36, 37, 39, 40 and 43-51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoelle et al (U.S. Pat. No. 3,333,181).

16. Hoelle et al teach that production of a concentrated water soluble extract from hops that have previously been extracted to remove the bittering components (col. 4, line 64 to col. 5, line 10). It is taught that the residue can be added back to the bitter components and then added to beer. It is taught that “the organic cell constituents of the hops have a favorable influence on the creation and maintenance of the foam on beer.” (Col. 4, lines 70-72). While Hoelle et al are silent as to how much pectin is contained in their composition there clearly is motivation to add

the claimed amount to obtain the optimum amount of foam maintenance. It would have been obvious to those of ordinary skill in the art to modify the composition of Hoelle et al to obtain the optimum amount of pectin in furtherance of optimizing the amount of beer foam.

17. It is also considered that, in the furtherance to modify the amount of bitterness or tannin in beers treated by the Hoelle et al products, that one would inherently modify the amount of constituents, such as pectin, to obtain the desired properties, whether it be clarity, bitterness or foam stability.

Response to Arguments

18. Applicants' arguments filed 09/24/99 and 12/07/99 have been fully considered but they are not persuasive.

19. Applicants argue that the instantly claimed products are not anticipated by the cited art because, if one were to add more hops to obtain the level of pectin claimed, one would add more bitterness and "the present invention is provided with extra hop pectin without adding in extra bittering and aroma agents." Because the claims have no such limitation, this argument is not given any weight.

20. A further review of the declaratory evidence reveals no evidence as to how the beet pectin was prepared. It is noted that the commercial pectin, tested in the specification, appears to provide the same results as the tested beet pectin. It also appears that

21. A comparison of the data contained in the specification with the declaratory evidence shows some inconsistencies. The declaratory evidence appears almost twice as high as shown in the specification. This difference is not explained. Until these inconsistencies can be cleared up, the rejections stand.

Conclusion

22. No claim is allowed.

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rigby (U.S. Pat. No. 3,730,730) teaches the production of water soluble extracts from hops.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The fax phone number for this Group is (703)-305-3602.

25. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.



Curtis E. Sherrer

February 3, 2000